

Compu Design, Inc.
501 Fletcher Avenue
Indianapolis IN 46203

Permit #RR49-12203
District 6

PROPOSED FINDINGS OF FACT
AND CONCLUSIONS OF LAW

I.
BACKGROUND OF THE CASE

That the Permittee, Compu Design, Inc., 501 Fletcher Avenue, Indianapolis IN 46203 (Permittee) is the holder of a type 210, Alcohol and Tobacco Commission (ATC) permit, permit #RR49-12203. The Permittee filed its 2002 renewal and that renewal was assigned to the Marion County Local Board (LB) for hearing. The LB heard the renewal and on March 18, 2002, voted to recommend denial of the renewal. The ATC adopted the recommendation of the LB and denied the renewal.

The Permittee filed a timely notice of appeal and the matter was assigned to ATC Hearing Judge, Daniel M. Steiner (HJ). The HJ assigned the matter for hearing on November 8, 2002, and at that time, witnesses were sworn, evidence was heard and the matter was taken under advisement. The Permittee was represented by Joseph F. Quill and the remonstrators, Indianapolis Police Department (IPD), were represented by Deborah L. Law. The HJ now submits his Proposed Findings of Fact and Conclusions of Law to the ATC for consideration.

II.
EVIDENCE AT THE HEARING

A.
WITNESSES

The following witnesses were sworn and provided testimony at the appeal hearing:

1. Rita Sutton (Sutton), who testified that she has worked with the Permittee for two years as office and event manager. She stated that the Permittee's main business function is in conducting of receptions. She stated that in the early morning hours of December 23, 2001, at approximately 2:40 a.m. she gave last call. At approximately 2:50 a.m., a fight broke out and went out into the street and it involved one of their clients, Rodney Rivers and that the client previously had five security guards working there. She stated that they have

never received an ATC violation citation for this problem or any other ATC citations. She further stated that on the night in question she spoke to Officer Sherron of IPD, but didn't say that it was an underage club. She further stated that a representative from Eli Lilly testified at the LB hearing, but that Lilly was not listed as a remonstrator against this Permittee.

2. Michael J. Harold (Harold), who stated that he is a co-owner of the premises and that they have been in business since August 1996. He stated they took over an old church, which was in very poor condition and have rehabilitated it. He stated that the corporation had been administratively dissolved, but was reinstated in August 2002, when he became aware of the problem. He also stated that he received a letter that there would be remonstrators against the renewal.
3. Lester Carver (Carver), he is an architect on Indiana Avenue, who is not aware of the operations of this permit premises, but knows owner Harold to be a hard worker, of good character and of good reputation.
4. Herb Masiuk (Masiuk), who testified that he is one of the owners and is a mechanical engineer. He stated that he had met with neighbors at neighborhood meetings and that remonstrator Jeff Miller never indicated to him that he was, in fact, going to be a remonstrator. He acknowledged that he has never had any contact with IPD regarding discussion of how to resolve any issues regarding this application.

B.

EXHIBITS

The following exhibits were offered and admitted at the appeal hearing:

1. Permittee's Exhibit 1, a certified copy of reinstatement of Compu Design, Inc., from the Indiana Secretary of State.
2. Permittee's Exhibit 2, a list of conditions, stipulations and covenants between the Permittee and Fletcher Place Neighborhood Association (FPNA) entered into prior to the LB hearing. (This is also Remonstrators' Exhibit 4 of the LB proceedings)
3. Permittee's Exhibit 3 (in 14 parts), commendations of the service to clients and customers who were serviced by the Permittee.
4. Permittee's Exhibit 4, a photo of the "Rose Grand Ballroom" of the Permittee's premises.
5. Permittee's Exhibit 5 (in 15 parts), photos depicting the appointments in side the Permittee's premises at 501 Fletcher Avenue, Indianapolis.

6. Permittee's Exhibit 6, petitions by business neighbors attesting that the business of the Permittee "has not been a public nuisance" and attesting further that the principals of the Permittee were of "good moral character and repute".
7. Permittee's Exhibit 7, letters of commendations from Honorable Maggie M. Brents, councilor, Marion County Council, in whose district the permit premises is located, requesting renewal of the permit.
8. Permittee's Exhibit 8, a flyer depicting a bunny in response to the contention that "the Playboy Bunny figure is obviously of concern". (Tr. P 11 L/B)
9. Remonstrators' Exhibit 1, a tape of the LB proceedings converted into the transcript.

The HJ took administrative notice of all matters in the file, including the record of the LB proceedings.

III. PROPOSED FINDINGS OF FACT

1. Permittee, Compu Design, Inc., located at 501 Fletcher Avenue, Indianapolis, Indiana 46203, is the holder of a type 210, ATC permit, permit #RR49-12203. Permittee obtained a catering hall designation in 1998 and has not changed its designation. Mike Harold is president and Rita Sutton is the manager of Permittee. (ATC file)
2. The application for renewal of this permit was investigated by the LB during a hearing on March 18, 2002. The LB recommended in a unanimous vote against the renewal of the permit. The LB cited character and fitness and public nuisance as its reasons for denial. On April 2, 2002, the ATC voted to uphold the recommendation of the LB. (ATC file)
3. At the LB hearing on March 18, 2002, a year after having been administratively dissolved, Permittee's president, Harold, stated that he was aware that the Permittee corporation had been administratively dissolved. Permittee offered its March 8, 2002, affidavit for reinstatement. (LB hearing transcript, pp. 19-20 and Permittee's Exhibit A)
4. At the November 8, 2002 appeal hearing, Harold stated that he first learned that Permittee Compu Design, Inc. had been administratively dissolved by the Indiana Secretary of State at the March 18, 2002 LB hearing. (ATC appeal hearing)

5. At the November 8, 2002 appeal hearing, Harold stated that the Permittee corporation was reinstated on or about August 20, 2002. (ATC appeal hearing and Permittee's Exhibit 1)
6. IPD received calls for service at the Permittee's premises on December 23, 2001, at approximately 2:50 a.m. Officers Jason Park (Park) and Joseph Sherron (Sherron) were among the officers who responded. (LB hearing transcript p. 3 and p. 5)
7. Park stated that he responded to the shots fired run at 501 Fletcher Avenue at approximately 2:50 a.m. on December 23, 2001. Park stated that the investigation revealed that the first shots were fired inside the premises at 501 Fletcher Avenue. After the first round of shots were fired, approximately 100 people fled from the building. Park arrested Rodney Rivers, the person who stated he rented the facility, for disorderly conduct. (LB hearing transcript pp. 3-4)
8. Sherron stated that he responded to the shots fired run at 501 Fletcher Avenue at approximately 2:50 a.m. on December 23, 2001. Sherron stated that people were fleeing from the building when he arrived. At approximately three (3) minutes after his arrival, a second round of shots was fired from the alley between Fletcher Avenue and Lord Street. One person was arrested for criminal recklessness with a firearm. The manager of the premises, Sutton, told Sherron that the event held December 22-23, 2001, was an under 21 club that was open to the public. (LB hearing transcript pp. 5-6)
9. The Permittee purchased an abandoned church at 501 Fletcher Avenue, Indianapolis, approximately five (5) years prior to the appeal hearing. (ATC appeal hearing)
10. The Permittee placed extensive improvements to the structure, which provided for accommodation for banquets and wedding receptions. (ATC appeal hearing)
11. During the five (5) years the Permittee has been in operation and holding the said alcoholic beverage permit, it has never been cited for a violation of the alcoholic beverage laws nor any laws concerning the dispensing of alcoholic beverages. (ATC appeal hearing)
12. During the five (5) years of operation, the records show that there were two (2) incidents, November 24, 2001 and December 23, 2001 (ATC appeal hearing and LB transcript p. 9), which involved the Permittee.
13. The incident on November 24, 2001, involved the damage to a windshield of a car in the proximity to the subject premises. (ATC appeal hearing)

14. One incident on December 23, 2001, occurred between the hours of 2:30 am. And approximately 3:00 a.m. on said date. (Police report, LB hearing, Exhibit 3 and LB transcript pp. 3-7)
15. Security guards were present at the premises on December 23rd, but left at 2:30 a.m. just prior to the disturbance. (ATC appeal hearing)
16. The incident on December 23, 2001, was instigated by a group of persons who were attending a party at the subject premises under the supervision of Clarence Lyles and Rodney Rivers, who had rented a portion of the subject premises for the party from the Permittee. (ATC appeal hearing)
17. On the December 23rd occasion, shots were fired by at least one of the attendees and the disturbance extended to the surrounding areas. (LB transcript pp 3-4)
18. No one was struck by the gunfire, but one of the participants was arrested for, among others, criminal recklessness and handgun offense. (LB transcript p. 6)
19. Some of the gunfire started on the second floor of the permit premises, in the presence of Sutton, the manager of the Permittee, who called IPD to assist in controlling the disturbance. (Sutton testimony appeal hearing)
20. The police officers testified that the run was a “typical disturbance” and that several shots were being fired from the alley towards the building and from the building. (LB transcript p. 4)
21. Mr. Rivers, a co-promoter of the party, was interrogated and detained, but not arrested. (LB transcript p. 4)
22. The only person arrested that evening was Kevin Walker, who was charged with criminal recklessness and firing a handgun. (LB transcript p. 6)
23. The officers did not observe any alcohol being served at that time. (LB transcript p. 6)
24. Sutton denied that she told Officer Munson that she told him that it was an “under 21 club”. (ATC appeal hearing)
25. The only complaint received by IPD was the one event. No other complaints were received concerning events at this location. (LB transcript p. 7)
26. Jeff Miller, who resides about two blocks from the permit premises at 501 Fletcher Avenue, attended the ATC appeal hearing, but did not testify. His testimony at the LB hearing was requested to be stricken from the record as Mr. Miller did not testify, though present at the ATC appeal hearing, and

subject himself to examination on those matters be testified to at the LB hearing. The motion to strike was based on the voluntary appearance before the HJ by Mr. Miller and that his testimony should be allowed to be examined. (ATC appeal hearing and LB transcript pp. 14-16)

27. That FPNA, the association in which the premises is located, did not remonstrate against the Permittee. (LB transcript p. 10)
28. The Permittee caters to weddings, receptions, church groups on Sundays and groups from Anthem and Eli Lilly's. (ATC appeal hearing)
29. Neither Mr. Miller nor Mr. Short contacted the Permittee showing any concern prior to the LB hearing. (ATC appeal hearing)
30. The LB did not have the benefit of the material evidence submitted by the Permittee at the ATC appeal hearing including, but not exclusive of, surrounding businesses acknowledging the good reputation of the owners, personal verification of that reputation by petition, verifying the fact that the Permittee's business does not constitute a public nuisance and the recommendation of the City County Councilor, in whose district the permit premises is located. (ATC appeal hearing)
31. Except for Mr. Miller, no affected residents remonstrated at the LB hearing or at the ATC appeal hearing. (LB hearing and ATC appeal hearing)
32. The covenants and conditions in the agreement with the FPNA were drafted after the December 23rd incident and have been fully complied with. (ATC appeal hearing)
33. The LB's recommendation was based exclusively on the December 23rd disturbance. (LB hearing transcript)
34. Mr. Frank Short, a councilor whose district does not include the permit premises, acknowledged that his objection was based "on just one event" and he "would hate to see those continue." (LB transcript p. 17)
35. The recommendation of the LB is contrary to the legally admissible evidence at the LB hearing and the ATC appeal hearing. The latter establishes conclusively that more affected persons and businesses in the relevant geographical area, who expressed an opinion either by petition or live testimony, support the renewal of the permit. (LB hearing and ATC appeal hearing)
36. There is substantial relevant evidence that the Permittee's principals' character and fitness are good and that the business of the Permittee does not constitute a public nuisance. (ATC file, LB record and ATC appeal hearing)

37. Any conclusion of law in the foregoing Findings of Fact shall be made a part of the ATC Conclusion of Law.
38. In closing argument, attorney Law stated that the incident from December 23, 2001, is the only major problem that IPD has experienced with this Permittee in their over five (5) years of operation. (ATC appeal hearing)
39. That in the leading case of Indiana Alcoholic Beverage Commission v. River Road Lounge, 590 NE 2nd 656 (1992), the court stated that in order for someone to allow a premises to become a public nuisance, they are required to have direct or indirect knowledge of problems with that premises. In this instance, this was apparently the first disturbance of any substantial proportion at these premises, the Permittee had no advance knowledge that such a problem was going to occur, and even though the Permittee was apparently under the mistake and assumption that it could delegate the responsibility for security under its permit, this shortcoming does not rise to the level of allowing its permit premises to become a public nuisance.

IV. CONCLUSIONS OF LAW

1. The Permittee, Compu Design, Inc., 501 Fletcher Avenue, Indianapolis IN is the holder of a type 210 permit. (ATC file)
2. The LB recommended denial of the renewal application because of “character and fitness” and “public nuisance”. (LB hearing)
3. The weight of the evidence supports the contention of the Permittee that a single, relevant incident of December 23, 2001, at the hours of closing the business, does not support a finding that the character and fitness of the Permittee and its principals are not eligible to hold and renew the permit and that no acts or conduct of the Permittee or its employees constitutes action as conduct prohibited by the Indiana Penal Codes IC 35-41-1-1 *et seq* or criminal laws of the United States. (905 IAC 1-27-1), and that the Permittee and its principals did not allow the licensed premises to become a public nuisance. (905 IAC 1-27-2)
4. To find that the permit should be denied and that there should be a finding that the Permittee has allowed the premises to become a public nuisance based on the incident of December 23, 2001, would be against the weight of the evidence and would be not sustained on judicial review based on the case of Alcoholic Beverage Commission v. River Road Lounge.

5. That where a permittee has had only one significant incident in five (5) years, had no knowledge that the incident was going to occur and where the Permittee was not cited by Excise nor had criminal charges filed as a result of that incident, a denial of the permit would not be sustained on judicial review.
6. That the recommendation of the LB and that adoption of that recommendation by the ATC was not supported by substantial evidence and, therefore, should be reversed.

THEREFORE, IT IS CONSIDERED ORDERED AND ADJUDGED that the recommendation of the LB to deny renewal of this application and the adoption of that recommendation by the ATC is hereby reversed, based on the finding that a single incident of December 23, 2001, does not support a finding that the Permittee has allowed the premises to become a public nuisance nor that the Permittee is of bad character and reputation. However, it will be required for the Permittee, as follows: 1) to be put on one (1) year renewals; 2) to require all its employees to attend and complete a server training program approved by the Indiana State Excise Police within 30 days of them being hired by the Permittee; 3) the Permittee shall be admonished that in the future, any questions they have regarding ATC laws or regulations shall be directed to the Indiana State Excise Police or a legal professional of their choosing; and, 4) admonished that they are responsible for all activities which occur within their premises and they cannot delegate responsibility for any activities under their ATC permit within their ATC premises.

Date _____

Daniel M. Steiner, Hearing Judge